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Robert R. Corbin

July 22, 1987

The Honorable Alan K. Polley
Cochise County Attorney
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Re: I87-100 (R87-023)

Dear Mr. Polley:

You have asked whether the office of county attorney is required to provide legal advice to justices of the peace and constables of the justice courts in light of the decisions in State v. Pima County Adult Probation Department, 147 Ariz. 146, 708 P.2d 1337 (App. 1985), and Winter v. Coor, 144 Ariz. 56, 695 P.2d 1094 (1985), holding that probation departments and city magistrate courts are part of the judicial department of the state.

We conclude that justices of the peace and justice court constables, although part of the integrated judicial department of the state, nevertheless are county officers whom the county attorney is required to advise on matters relating to the duties of those offices. See Ariz. Atty. Gen. Op. 181-086.

A.R.S. § 11-532, prescribing the powers and duties of the county attorney, provides that the county attorney shall "[w]hen required, give his written opinion to county officers on matters relating to the duties of their offices." A.R.S. § 11-532(7).

The crux of our inquiry, then, is whether the offices of justice of the peace and justice court constable are county offices or state offices.

The Arizona Supreme Court considered the nature of the office of justice of the peace in Hellman v. Marguardt, 111 Ariz. 95, 523 P.2d 792 (1974). In Hellman the court had to

determine whether under Rule 4(b) of the Rules of Procedure for Special Actions^{1/} the Superior Court of Maricopa County was the proper venue in which to bring a special action against a justice of the peace presiding in a Yavapai County precinct. If the justice of the peace were a state officer, Maricopa County would have been the proper venue. If the justice of the peace were not a state officer, then proper venue would have been in the county in which the justice of the peace had acted.

In arriving at its decision that a justice of the peace is not a state officer, the court said that although the administration of justice is a state affair, the exercise of a portion of the powers of the government does not justify classifying the office of justice of the peace as a state office rather than a local office. The court pointed out that an important factor in determining whether an office is state or

^{1/}Rule 4(b) of the Rules of Procedure for Special Actions (17A ARS) provides:

(b) Where action brought. An action brought in the Superior Court under this Rule shall be brought in the county in which the body or officer has or should have determined the matter to be reviewed, or, in the case of a state officer or body, either in Maricopa County or in the county of residence of the plaintiff; or in case of any public officer or body, or of a private corporation, in the county of the principal place of business of such officer or body or corporation; or if there is no principal place of business in Arizona for a private corporation defendant, the action may be brought in Maricopa County or, at the option of the plaintiff, in the county of his residence. Where the action is brought in a Court of Appeals, it shall be brought before whichever Court of Appeals has territorial jurisdiction over the county in which the action might have been brought had it been presented to a Superior Court.

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statute governing qualifications of individuals seeking election to a county office, A.R.S. § 11-402, applies to the constable. Nichol v. Superior Court, Maricopa County, 106 Ariz. 208, 209, 473 P.2d 455, 456 (1970).

A constable's duties, while more limited, closely resemble those of another county officer - the sheriff. See Ariz. Atty. Gen. Op. I84-167. A.R.S. § 22-131(A) provides that constables shall attend justice court sessions when required and shall serve process when directed to do so by the justice of the peace. Section (B) of this statute indicates that the provisions of law relating to sheriffs, so far as applicable, shall govern the powers, duties and liabilities of constables. Pursuant to A.R.S. § 11-401, the sheriff is an officer of the county.

From the foregoing and the reasoning in Hellman v. Marquardt, the office of constable is local in character and, therefore, is a county office.

We do not interpret State v. Pima County Adult Probation Department or Winter v. Coor to support any conclusion other than that the offices of justice of the peace and justice court constable are local offices and, therefore, county offices for the purpose of your inquiry.

In State v. Pima County Adult Probation Department the Court of Appeals found that adult probation officers are part of the judicial department of the state and as such are entitled to the protection and benefits of the State's insurance program established pursuant to A.R.S. § 41-621.3/ The court of

3/A.R.S. § 41-621, in pertinent part, provides:

A. The department of administration shall obtain insurance against loss, to the extent it is determined necessary and in the best interests of the state as provided in subsection C of this section, on the following:

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3. The state and its departments, agencies, boards and commissions and all officers, agents and employees thereof

local is the extent of the territory which the office governs. Citing A.R.S. §§ 22-101, 22-111, 22-116 and 22-117,^{2/} the court concluded:

We think that in Arizona the office of justice of the peace is local in character and therefore hold that under the Constitution and Arizona statutes it is a county office.

Id., 111 Ariz. at 98, 523 P.2d at 795.

The office of constable was not created by the Constitution, nor is the term thereof prescribed by the Constitution. However, the salary of a constable is required by law to be fixed and definite. Ariz. Const., art. XXII, § 17. Barrows v. Garvey, 67 Ariz. 202, 204, 193 P.2d 913, 915 (1948). A.R.S. § 22-102 provides that a constable shall be elected by the qualified electors of the justice precinct at the general election for state and county officials. Additionally, the

^{2/} A.R.S. § 22-101 authorizes the boards of supervisors to divide the counties into justice precincts and change or abolish any justice precinct or redistrict the county.

A.R.S. § 22-111 prescribes that the electors of each justice of the peace precinct shall elect one justice of the peace in the precinct at the general election every four years. A.R.S. § 22-116 provides for the deposit of funds in the county treasury with unclaimed money being deposited in the general fund of the county.

A.R.S. § 22-117, in 1974, provided that office rent, stationery, telephone and lights to support a justice of the peace would be a county charge. In 1981, the Legislature amended A.R.S. § 22-117 to add that the State shall pay forty per cent of the compensation of a justice of the peace and the county shall pay sixty per cent of the compensation with the county paying one hundred per cent of the employer's contributions to the state retirement plan and any county health plan.

We doubt that the State's sharing of the cost of compensation has the effect of converting the office of justice of the peace from a local office to a state office.

appeals relied on several factors in reaching its conclusion that the chief adult probation officer and his deputies are officers, agents and employees of the state judicial department.

The court initially observed that A.R.S. §§ 12-251 through 254 provide that the chief adult probation officer is appointed by the presiding judge of the superior court and works under his direction and control. 147 Ariz. at 148, 708 P.2d at 1339. In turn, the chief probation officer, with the approval of the presiding judge, appoints deputy probation officers to prepare presentence reports and to supervise probationers. Id. The court also noted that the Arizona Supreme Court, in Broomfield v. Maricopa County, 112 Ariz. 565, 544 P.2d 1080 (1975), concluded that probation officers are part of the judicial function. Id.

The Court of Appeals further pointed to financial and personnel considerations that supported its holding. In particular, the court observed that the probation department budget was submitted to the presiding judge of the superior court. Additionally, the probation department works with and takes directives from administrative officers at the Arizona Supreme Court. Id. Finally, the Court of Appeals did not find compelling the fact that the county subsidized the salaries of the probation officers. 147 Ariz. at 149, 708 P.2d at 1340.

A comparative analysis of the Supreme Court's opinion in Hellman v. Marquardt and the Court of Appeals' opinion in State v. Pima County Adult Probation Department is not particularly meaningful to resolution of your question. Even if the Court of Appeals had decided that justices of the peace and constables, as officers in the integrated judicial department of the State, are entitled to the benefits and protection of A.R.S. § 41-621,⁴ the Supreme Court opinion that justices of the peace are local officers (i.e. county officers) would continue to be the law. That circumstance alone would compel us to conclude as we have. Only if we interpret Winter v. Coor as overruling Hellman v. Marquardt should we conclude that justices of the peace and constables are not county officers.

⁴/In view of the Supreme Court's opinion in Winter v. Coor, we do not doubt that justices of the peace are officers in the integrated judicial department of the State.

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In Winter v. Coor, the town of Goodyear attempted to oust its magistrate whom it believed to an employee at will. The Supreme Court initially recognized the obvious threat to the judicial independence of town magistrates if the town of Goodyear's position was sustained. 144 Ariz. at 60, 695 P.2d at 1098. The court also acknowledged the local nature of these courts by pointing out that for many citizens, the magistrate courts represent their only contact with the judicial system. 144 Ariz. at 61, 695 P.2d at 1099. This fact underscored the need for judicial independence, particularly at the town or city level. Accordingly, the Supreme Court concluded that magistrate courts are part of the integrated judicial department of the State. 144 Ariz. at 59, 695 P.2d at 1097.

We do not perceive any threat to the independence of the justices of the peace of the judicial department of the State or any violation of the Arizona Constitution's requirement of separation of powers if the office of the county attorney renders legal services to the justice courts in this State. Moreover, we have no reason to think that such advice otherwise will be inconsistent with the laws of the State.

Sincerely,



BOB CORBIN
Attorney General

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